

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION**

**ALL POINTS CAPITAL CORP.,
a foreign corporation,**

Plaintiff,

vs.

CASE NO. 5:11-cv-116/RS-EMT

**BOYD BROTHERS, INC., a
Florida corporation, et al.,**

Defendants.

ORDER

Before me are Plaintiff Motion to Strike Demand for Jury Trial (Doc. 18) and Defendants' Response (Doc. 30).

The Seventh Amendment guarantees the right to a jury for suits at common law. U.S. Const. amend VII. However, parties to a contract may validly waive the right to a jury trial where such waivers are knowing and voluntary. *Bakrac, Inc. v. Villager Franchise Sys.*, 164 Fed. Appx. 820, 823 (11th Cir. 2006) (unpublished). In making this assessment, the court will consider the conspicuousness of the waiver provision, the parties' relative bargaining power, the sophistication of the party challenging the waiver, and whether the terms of the contract were negotiable. *Id.* at 824. The circuits are split as to which party has the burden of proving whether a contractual jury trial waiver was knowing and voluntary. The Eleventh Circuit has not decided the issue. *Id.* at 824, n.1.

At this stage of the case, the issues and facts have yet to be fully developed in the record. I will be better able to analyze whether the waiver was knowing and voluntary at a later stage of the case when the issue has been fully developed.

The Motion to Strike Demand for Jury Trial (Doc. 18) is **DENIED** without prejudice.

ORDERED on July 7, 2011.

/S/ Richard Smoak
RICHARD SMOAK
UNITED STATES DISTRICT JUDGE